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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-98

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request of ALTS for Clarification	)	
of the Commission's Rules	)	CCB/CPD 97-30
Regarding Reciprocal Compensation	)	
for Information Service Provider	)	
Traffic	)	

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files these reply comments in support of its requested clarification.

I. THE RULES REQUIRING ISP CALLS BE TREATED AS LOCAL AND ISPS BE TREATED AS END USERS ALSO REQUIRE SUCH CALLS BE TREATED AS LOCAL WHEN EXCHANGED BETWEEN ILECS AND CLECS.

Rather than respond to the merits of ALTS' requested clarification, the ILECs have chosen instead to mischaracterize ALTS' arguments, and to steadfastly ignore the illogic and lack of factual support for their own contentions, as demonstrated below.

A. ALTS Does Not Seek A Jurisdictional Change For Any Traffic, Only Clarification That the ISP Rule Applies to All Exchanges of ISP Traffic Among All LECs.

The ILECs claim in their oppositions to ALTS' requested clarification that ALTS is seeking to place local calls to ISPs

within the states' exclusive intrastate jurisdiction.[1] This disingenuous claim is completely incorrect. ALTS' position -- one which none of the ILECs attempt to address -- is simple and beyond challenge. It starts with the fact that for several years now the Commission has required all calls to ISPs originating within a local calling area to be charged pursuant to local tariffs (the "ISP Rule"). The ultimate source of the Commission's authority here is not the particular geographic end points of the call, but rather that aspects of such calls fall within the Commission's overall jurisdiction over enhanced services. The ILECs do not and cannot challenge the existence or operation of the ISP Rule, which they faithfully implement in the following manner:

- By charging all such calls using local tariffs.
- By treating such calls as local in their separations reports and state rate cases.
- By treating such calls as local in ARMIS reports.
- By treating such calls as local when they are exchanged among adjacent local exchange carriers.[2]

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[1] USTA Comments at 2-5; CBT Comments at 2.

[2] See, e.g., United Telephone's application to the Pennsylvania PUC dated June 30, 1997, seeking approval of its "pre-existing" interconnection agreements with Bell Atlantic because the agreements assertedly: "are available to any other telecommunications carrier certified to provide local telephone service in Pennsylvania." But the United-Bell Atlantic agreements contains no exception for local calls to ISPs, thereby putting this statement to the Pennsylvania PUC and Bell Atlantic's statements to this Commission into serious conflict.

Inasmuch as the ILECs' own implementation of the ISP Rule treats these calls as local for multiple regulatory purposes, including the exchange of such calls with other ILECs, the ISP Rule clearly requires that such calls also be treated as local when they are exchanged between ILECs and CLECs. This is ALTS' position -- and not the straw man request for an order "declaring interstate access traffic to be local" concocted by USTA in its comments as a smokescreen.

The merit of ALTS' request is also underscored by the recent determination in the Universal Service Order (CC Docket No. 96-45, released May 8, 1997) that ISPs should not be required to make universal service payments because a call to an ISP: "is distinguishable from the Internet service provider's service offering" (at ¶ 789). The Commission's finding that such calls are "distinguishable" from the ISP service (i.e., that such calls are local) would be fatally undercut, and with it the fundamental logic of excluding ISPs from universal service contributions, if the ISP Rule failed to treat such calls as local for all relevant purposes, including the exchange of such traffic between ILECs and CLECs.

B. Nothing in the Local Competition Order Altered the ISP Rule.

Beyond their failure to show why the ISP Rule does not fully apply to all LEC-LEC exchanges of local traffic to ISPs (as confirmed by their behavior among themselves), the ILECs also fail to support their own theory because they fail to identify

any aspect of the Local Exchange Order which modified or terminated any aspect of the ISP Rule.

When Bell Atlantic and NYNEX first surfaced their theory that local calls to ISPs could not be treated as local in reciprocal compensation agreements, they claimed that: (1) the Local Exchange Order prohibits the inclusion of "interexchange" traffic in reciprocal compensation agreements, and (2) local traffic to ISPs is "interexchange" because all interstate traffic is "interexchange." As an initial matter, of course, this represents a world class flip-flop by Bell Atlantic, which specifically identified Internet traffic as the kind of traffic that would be subject to reciprocal compensation agreements in the Local Competition proceeding.[3]

Putting aside the breezy fashion in which Bell Atlantic now seeks to change the very rules it sought and obtained because it can't stand the current score in the competitive ball game, none of the ILECs in their oppositions can establish either prong of their two-fold argument. First, there was absolutely no reason for the Commission to have used the term "interexchange" to

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[3] See Reply Comments of Bell Atlantic filed May 30, 1996, in CC Docket No. 96-98 at 21: "Moreover, the notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and internet access providers. The LEC would find itself writing large monthly checks to the new entrant." (Emphasis supplied.)

designate traffic by jurisdiction in the Local Competition Order's discussion of reciprocal compensation. This is underscored in the Local Competition Order itself (at ¶ 1034): " ... reciprocal compensation provisions of Section 251(b)() for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic" (emphasis supplied). Obviously, the Commission could not have inserted "interstate or intrastate" before the term "interexchange" if the ILECs were correct that "interexchange" could only refer to interstate traffic.[4] Indeed, because the Commission was promulgating rules that would apply (absent the Eighth Circuit's recent decision) to both jurisdictions, there was no simply reason to impose jurisdictional restrictions on the kinds of traffic included.

In excluding "interexchange" traffic, the Commission was actually protecting against the arbitrage that could have been created by the inclusion of traffic subject to Part 69 traffic charges, as amply demonstrated throughout its decision in general (see its discussion of Section 251(g)), and in the reciprocal compensation section in particular. Since local calls to ISPs do not pay Part 69 access charges, they plainly do not fall within the meaning of "interexchange" used in the Local Competition

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[4] See also Ameritech's claim that ALTS' request is: "based on the false premise that reciprocal compensation obligations are determined with reference to a call's status under the Commission's Part 69 rules, rather than its geographic boundaries for jurisdictional purposes" (Ameritech Comments at 5).

Order.

The second prong of the ILEC argument -- that all interstate traffic is interexchange -- is equally unfounded. A great deal of interstate traffic is treated as local traffic, not interexchange, as the residents of metropolitan Washington D.C. well understand (see Section 221(b)). The simple truth is that the regulatory categories of local, interexchange, intraLATA, interLATA, etc., operate entirely independently of the intrastate or interstate nature of a call.

Finally, even if there were any merit to the ILECs' interpretation of the Local Competition Order (and there clearly is none), the Eighth Circuit Court of Appeals' vacation of the Commission's rules dealing with reciprocal compensation[5] would deprive the ILECs of any reliance on the Local Competition Order.[6]

II. ALTS'S REQUESTED CLARIFICATION HAS NO IMPLICATIONS ON THE POLICY ISSUES RAISED IN THE INTERNET NOI.

The ILECs also oppose ALTS' requested clarification because it will allegedly exacerbate supposed problems created by the

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[5] Iowa Utilities Board v. Federal Communications Commission, No. 96-3321 (8th Cir.; decided July 18, 1997).

[6] For example, SNET relies on Rule 51.701(b)(1) to support its argument (SNET Comments at 3-4). Even if SNET's logic were correct (which it is not), the Eighth Circuit expressly vacated this rule (slip opinion at 114, n. 21).

underlying ISP rule.[7] But the ILECs' factual premise is unfounded. The number of local calls to ISPs will not increase just because ILECs have to treat local calls to ISPs which terminate on CLEC networks in the same fashion as they treat calls which terminate on ILEC networks.

And even if -- contrary to fact -- equal treatment for ISP traffic which terminates on CLECs somehow increased the number of local calls to ISPs, the ILECs' claim that the underlying ISP Rule somehow creates a "problem" has never been adopted by the Commission. In fact, this very claim is currently pending before the Commission in its Internet NOI proceeding. The Commission would be prejudging the merits of the Internet NOI proceeding to adopt the ILECs' "exacerbation" theory here.

Some ILECs also claim that "asymmetric" traffic flows should not be subject to reciprocal compensation agreements.[8] But the Local Competition Order confronted the issue of asymmetric traffic flows, and rejected the use of "bill and keep" (which ALTS had urged) except where traffic flows were relatively in balance (at ¶ 1111).

Furthermore, even if there were any problem with including "asymmetric" traffic flows in reciprocal compensation agreements, separate treatment of calls to ISPs taking CLEC service would not

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[7] Ameritech Comments at 15; CBT Comments at 3.

[8] SNET Comments, Attachment at 4.

eliminate the "problem," given the many other kinds of asymmetric calling patterns that exist (telemarketing, food delivery services, etc.).

III. ALTS' REQUESTED CLARIFICATION DOES NOT REQUIRE THE COMMISSION TO EXERCISE ANY JURISDICTION OVER RECIPROCAL COMPENSATION AGREEMENTS IN GENERAL, OR TO INTERPRET ANY SPECIFIC AGREEMENTS.

While ALTS is seeking a clarification of the ISP Rule, ALTS is most definitely not seeking to have the Commission interpret specific reciprocal compensation contractual language, or asking the Commission to set transport and termination rates. ALTS simply wants the Commission to repudiate the ILECs' theory that the Local Competition Order somehow altered the ISP Rule. If any ILEC wants to argue that local calls to ISPs are not encompassed by the particular language of a specific reciprocal compensation agreement, that is a matter for the dispute mechanisms of that agreement (though it is worth noting that no such exclusionary language has been identified by any ILEC).

Nor is the Commission being asked to exercise pricing jurisdiction over Section 252 interconnection agreements. If the ILECs have issues over the rates charged for transport and termination in any agreement (an issue they have not yet raised), that is now a matter for the states to decide, assuming the Eighth Circuit is upheld on this point.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission grant the requested clarification that calls to ISPs from within local calling areas should continue to be treated as local calls for regulatory purposes, including the exchange of such traffic between ILECs and CLECs.

Respectfully submitted,

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July 31, 1997

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